

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF TENNESSEE**

JOHN DOE, individually and on behalf of all  
others similarly situated,

Plaintiff,

v.

VANDERBILT UNIVERSITY,

Defendant.

No. 3:20-cv-00356

Judge William L. Campbell, Jr.

Magistrate Judge Jeffrey S. Frensley

**PLAINTIFF'S THIRD NOTICE OF SUPPLEMENTAL AUTHORITY**

Plaintiff, John Doe, by and through his attorneys, and as his Third Notice of Supplemental Authority, hereby states the following:

In Plaintiff's Opposition to Motion to Dismiss, Plaintiff noted that "four cases analyzing nearly identical claims against educational institutions in the wake of COVID-19 have each denied motions to dismiss claims for unjust enrichment and breach of contract to provide live, in-person instruction and access to campus facilities." ECF No. 42 at 2 (collecting cases). Since the submission of Plaintiff's opposition on September 11, 2020, Plaintiff's First Notice of Supplemental Authority filed on November 6, 2020 (ECF No. 52), Plaintiff's Second Notice of Supplemental Authority filed on December 21, 2020 (ECF No. 61), and Plaintiffs' response to Defendant's Notice of Supplemental Authority filed on December 18, 2020 (ECF No. 59), Plaintiff has identified additional recent, persuasive decisions. Such additional decisions include the following, which Plaintiff submits as additional support for an order denying Defendant's motion to dismiss:

1. *Bergeron v. Rochester Inst. of Tech.*, 20-CV-6283 (CJS), 2020 WL 7486682

(W.D.N.Y. Dec. 18, 2020) (Exhibit 1) (denying motion to dismiss);

2. *Doe v. Bradley Univ.*, No. 1:20-cv-01264-MMH-JEH, 2020 U.S. Dist. LEXIS 240698, (C.D. Ill. Dec. 22, 2020) (Exhibit 2) (denying motion to dismiss);
3. *Bahrani v. Northeastern University*, No. CV 20-10946-RGS, 2020 WL 7774292 (D. Mass. Dec. 30, 2020) (Exhibit 3) (denying, in part, motion to dismiss);
4. *Hiatt v. Brigham Young University*, No. 1:20-CV-00100-TS, 2021 WL 66298 (D. Utah Jan. 7, 2021) (Exhibit 4) (denying defendant's motion to dismiss for failure to state a claim);
5. *In Re: Boston University Covid-19 Refund Litigation*, No. CV 20-10827-RGS, 2021 WL 66443 (D. Mass. Jan. 7, 2021) (Exhibit 5) (denying defendant's motion to dismiss);
6. *McCarthy v. Loyola Marymount University*, No. 2:20-CV-04668-SB (C.D. Cal. Jan. 8, 2021) (ECF No. 43) (Exhibit 6) (denying defendant's motion to dismiss); and
7. *Rhodes v. Embry-Riddle Aeronautical University, Inc.*, No. 6:20-cv-00927-PGB-EJK (M.D. Fla. Jan. 14, 2021) (Exhibit 7) (denying defendant's motion to dismiss).

Plaintiff respectfully suggests that these decisions, involving student claims for tuition and/or fee refunds following COVID-19-related campus closures, further support their opposition to Defendant's motion to dismiss.

Dated: January 14, 2021

Respectfully submitted,

By: /s/ Daniel J. Kurowski

Tricia Herzfeld (BPR #26014)  
Anthony A. Orlandi (BPR #33988)  
BRANSTETTER, STRANCH & JENNINGS, PLLC  
223 Rosa L. Parks Ave., Suite 200  
Nashville, TN 37203  
T: (615) 254-8801  
F: (615) 255-5419  
*triciah@bsjfirm.com*  
*aorlandi@bsjfirm.com*

Steve W. Berman (*Pro Hac Vice*)  
HAGENS BERMAN SOBOL SHAPIRO LLP  
1301 Second Avenue, Suite 2000  
Seattle, WA 98101  
T: (206) 623-7292  
*steve@hbsslaw.com*

Daniel J. Kurowski (*Pro Hac Vice*)  
Whitney K. Siehl (*Pro Hac Vice*)  
HAGENS BERMAN SOBOL SHAPIRO LLP  
455 N. Cityfront Plaza Drive, Suite 2410  
Chicago, IL 60611  
T: (708) 628-4949  
*dank@hbsslaw.com*  
*whitneys@hbsslaw.com*

*Attorneys for Plaintiff, individually and on behalf of  
all others similarly situated*

**CERTIFICATE OF SERVICE**

The undersigned attorney hereby certifies that a true and correct copy of the *Plaintiff's Third Notice of Supplemental Authority* was filed electronically on January 14, 2021, a copy of which will be served upon all counsel of record as listed below by the Court's CM/ECF system.

Kevin C. Klein (#23301)  
Ryan P. Loofbourrow (#33414)  
KLEIN SOLOMON MILLS, PLLC  
1322 4th Avenue North  
Nashville, Tennessee 37208  
(615) 600-4780  
kevin.klein@kleinpllc.com  
ryan.loofbourrow@kleinpllc.com

Bruce M. Berman (*pro hac vice*)  
WILMER CUTLER PICKERING HALE AND DORR LLP  
1875 Pennsylvania Avenue NW  
Washington, DC 20006  
(202) 663-6173  
bruce.berman@wilmerhale.com

Alan E. Schoenfeld (*pro hac vice*)  
WILMER CUTLER PICKERING HALE AND DORR LLP  
7 World Trade Center 250 Greenwich Street  
New York, NY 10007  
(212) 937-7294  
alan.schoenfeld@wilmerhale.com

/s/ Daniel J. Kurowski  
Daniel J. Kurowski